

**The LANCASHIRE COUNTY COUNCIL UPGRADING OF WRIGHTINGTON FOOTPATH 21 TO
BRIDLEWAY BETWEEN MOSS LANE AND MOSSY LEA ROAD, WRIGHTINGTON,
WEST LANCASHIRE BOROUGH
DEFINITIVE MAP MODIFICATION ORDER 2016**

**Statement of Case on which the Order Making Authority considers that the
Order should be confirmed**

Background

1. On the 9th October 2014, Lancashire County Council (the relevant Surveying Authority) received user evidence forms ("UEFs") (Document 20) from Wrightington Parish Council in connection with a route recorded as a public footpath situated between Mossy Lane and Mossy Lea Road, Wrightington.
2. The UEFs detailed use by members of the public on horseback and on bicycles of a route recorded on the Definitive Map and Statement as a public footpath.
3. No formal application for a Definitive Map Modification Order ("DMMO") was made, but the application process for an Order under Section 53(2) of the Wildlife and Countryside Act 1981 (the "1981 Act") was effectively self-started by the Planning and Environment Section of the County Council and added to the Statutory Register of applications on 17th December 2014.
4. Officers from the County Council (hereinafter referred to as the Order Making Authority, "OMA") investigated what public rights existed over the route in question and prepared a report detailing their investigation and their recommendation that based on the evidence submitted an Order should be made to upgrade Wrightington Footpath 21 to a bridleway. The report was considered by the OMA's Regulatory Committee on 13th May 2015 which accepted the recommendation and decided to make an Order pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53 (c)(ii) of the Wildlife and Countryside Act 1981 to upgrade Wrightington Footpath 21 between Moss Lane and Mossy Lea Road to bridleway on the Definitive Map and Statement ("DMS") of Public Rights of Way and that being satisfied that the test for confirmation could be met the Order be promoted to confirmation.
5. Notice of the OMA's decision to make an Order was sent to affected individuals on 28th July 2015 (Document 15).
6. Subsequent to the OMA's decision to make an Order, access along the route was temporarily restricted in October 2015 by a barrier erected across the route close to point B. This barrier was subsequently removed but it resulted in four additional letters to the OMA from persons claiming to have used the Order route on horseback or by bicycle with three of the letters explaining that use had continued up until it was blocked by the barrier (Document 28).
7. The Order was duly made on 7th September 2016 (the "Order") (Document 1). The Order was made under Section 53(2)(b) of the 1981 Act because it appeared to the OMA that the DMS required modification in consequence of the occurrence of an event specified in 53(3)(b) and 53(3)(c)(ii) namely the expiration, in relation to any way in

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the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path; and the discovery by the OMA of evidence which (when considered with all other relevant evidence available to them) showed that a highway shown in the map and statement as a highway of a particular description, namely a footpath, ought to be there shown as a highway of a different description, namely a bridleway.

8. Notice of Making of the Order was served on affected individuals and prescribed organisations, erected on site and published in the local press in accordance with paragraph 3 of Schedule 15 of the 1981 Act (Document 7).
9. During the specified period for objections and representations to the Order, the OMA received 16 objections (three of which were signed as being from both husband and wife) and 3 representations supporting the Order and providing information from a landowner and further evidence of use (Document 4).
10. The objections have not been withdrawn so the Order cannot be confirmed by the OMA and consequently the OMA is now submitting the Order to the Planning Inspectorate for a determination on confirmation.

The Order Route

11. The Order route is shown on the Order plan between points A-B-C-D-E-F-G. Site inspection was carried out in September 2014 and the route description detailed below was written describing the route as it was at that time. Photographs of the route have been included with the OMA submission (Document 22).
12. The Order route commences at point A on Moss Lane, immediately south of Wrightington Hotel and Country Club. Access onto the Order route from the lane was open and unrestricted. A public footpath signpost was situated at the start of the Order route indicating its current recorded status together with additional OMA notices advising that it should not be used by horses or unauthorised vehicles.
13. From point A, the Order route is 5 metres wide enclosed between post and sheep netting fences and hedges/trees that separated it from the hotel premises to the north and a field to the south. The surface of the Order route was firm with a compacted stone strip down the centre and grass down either side. There was evidence of recent use by horses (hoof prints). Between point A and point B, the width of the Order route tapers to 2.6 metres at point B where it passes between a fenced-off electricity substation (not accessed from the Order route) and a mature tree which protrudes into the Order route from the south-eastern fence line.
14. Beyond point B, the Order route continues at a width of approximately 4 metres enclosed between the boundary fences of the hotel to the north and the field to the

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south. Trees along the hotel boundary had been cut back and maintained to a height suitable for pedestrians, but the higher branches were at a height that would affect anyone riding a horse. Between point B and point C, the useable width reduced to approximately 2 metres due to the branches extending out across the path from the hedges and trees growing along either side of the Order route.

15. From point C, views from the Order route opened up along the north side and although it was still enclosed from the adjacent fields there is just a post and wire fence to the north. A mature hedge bounded the Order route on the southern side all the way to point F and between the wooden post and wire fence and hedge there was a useable width of approximately 2.5 metres. The surface of the path from point A through to point F appeared to have been recently mown. A large tree was situated within the width of the Order route at point E which restricted the width available to use at this point to between 1.5 metres – 2 metres depending on whether the adjacent hedge had been cut back.
16. Beyond point E, the path continued rising gradually uphill with a drop down on the northern side of the path of approximately 1 metre within the boundaries of the enclosed path. There was still a 1.5 metres – 2 metres wide level path available to use above the 'drop' which extends over a distance of approximately 10 metres.
17. At point F, the Order route passed onto a tarmac surfaced parking area at the front of two properties (6 and 8 Mossy Lea Fold). It then continued along an access road known as Mossy Lea Fold past several residential properties accessed from the Order route. The Order route also provided access to a field to the south. That part of the Order route was approximately 4 metres wide and the surface comprised of compacted stone and soil. A streetlight was positioned halfway along Mossy Lea Fold between point F and point G. The Order route ends at the open junction with Mossy Lea Road at point G on the Order plan. It was signed as a public footpath and as Mossy Lea Fold.
18. In 2015, a barrier was erected on the route between point A and point B which effectively prevented any future use by horse riders (Document 28) although this barrier was subsequently removed.
19. The total length of the Order route is 0.59km.
20. Whilst the Order Map shows the route between points A-B-C-D-E-F-G (as described above) it has been identified that the description in Part 2 of the Order refers to the route being between points A-B-C-D-E-F only. This is an error in the wording of the Order and the OMA request a modification to the Order in this respect.

Legal issues

21. The provisions of the 1981 Act set out tests which must be addressed in deciding whether the DMS should be modified. The OMA made the Order because it appeared

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to the OMA that the DMS required modification in consequence of the occurrence of an event specified in S53(3)(b) and S53(3)(c)(ii) namely, the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path; and the discovery by the Authority of evidence which (when considered with all other relevant evidence available to them) shows that a highway shown in the map and statement as a highway of a particular description, namely a footpath, ought to be there shown as a highway of a different description, namely a bridleway.

22. As the route already appears on the definitive map as a public footpath, it was not sufficient to satisfy the lesser test in S53(3)(c)(i) of reasonably alleging the existence of bridleway rights, in deciding to make an Order, instead the standard of proof required was that a highway shown as of a particular description should be shown as a highway of a different description on the balance of probability S53(3)(c)(ii).
23. In the case of *Todd and another v Secretary of State for Environment, Food Rural Affairs* [2004] EWHC 1450 Evans-Lombe J made it clear that the confirming authority (whether the local authority confirming an unopposed order or the Secretary of State confirming an opposed order) must be satisfied on the balance of probabilities that the right of way subsists.
24. The relevant statutory provision in relation to a presumed dedication of a public right of way is Section 31 of the Highways Act 1980 (the "1980 Act"). Section 31 provides that where a way has actually been enjoyed by the public, 'as of right' (meaning without secrecy, force or permission) and without interruption, for a period of twenty years prior to its status being brought into question, the way is deemed to have been dedicated as a highway, unless there is sufficient evidence that the landowner demonstrated a lack of any intention during this period to dedicate a public right of way.
25. It should be noted that under Section 30 of the Countryside Act 1968 any member of the public has as a right of way, the right to ride a bicycle, not being a mechanically propelled vehicle, on any bridleway and as such, evidence of use on a bicycle following the implementation of that Act is therefore relevant to this case.
26. For the Order to be confirmed, the Inspector needs to be satisfied that, on the balance of probability, the evidence considered by the OMA, when considered with all other evidence, is sufficient evidence from which to infer public bridleway rights have been dedicated on the Order route and the route marked A-B-C-D-E-F-G on the Order Map should be upgraded on the DMS to bridleway.

Evidence

27. The Order route was recorded as a public footpath as part of the definitive map process dating back to the 1950s and its publicly recorded status was not challenged as part of that process.

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28. There appears to be some evidence that the route was being used by horses in the 1960s and 1970s but in 1978 the two landowners at that time - Mr Calderbank and Mr Laithwaite – stated that they were withdrawing permission for horses to use the route (Documents 29 and 30).
29. No further correspondence since 1978 was found which documented Mr Laithwaite or Mr Calderbank or any other or subsequent landowners specifically allowing or preventing horses using the route.
30. Internal OMA records suggest there had been some continued use of the Order route by horse riders after 1978 due to reports submitted relating to the surface of the path. Most of the reports in the early 1980s related specifically to the condition of the route between points F-G which was used by vehicles and on foot to access residential properties.
31. Since the Order was made further investigations appear to suggest that in or around 2010 to 2011 use of the route by horses had been the subject of some concern with regards to the available width of the route and the fact that in wet weather the ground was becoming churned up and difficult to walk on. As a result of concern it appears that a member of the OMA's Public Rights of Way Team attached notices to the existing public footpath fingerposts providing information regarding the fact that the route was recorded as a public footpath and that horse riding and use by unauthorised vehicles was not allowed. It appears that these signs were erected in December 2010 or early in January 2011. In addition, it appears that discussions took place in 2010-2012 between several landowners, adjacent landowners and the OMA to see whether agreement could be reached to widen, surface and record the route as a public bridleway or whether some sort of concessionary agreements could be made. It appears that Wrightington Parish Council had some involvement with this project but that ongoing use of the route by horse riders and cyclists was not challenged during this time. When the matter was not progressed it was decided by the Parish Council to submit evidence of equestrian use of the route to the OMA which prompted the investigation and Order making process as detailed above.
32. On the basis of the user evidence presented the OMA considered the tests for deemed dedication under S.31 Highways Act 1980 could be satisfied. The OMA acknowledge that in order to satisfy the criteria of S.31 there must be evidence of sufficient evidence of use of the route by the public, as of right and without interruption, over the twenty-year period immediately prior to its status being brought into question, in order to raise a presumption of dedication.
33. On balance, when the Order was made, there did not appear to be any act challenging users after 1978 until a barrier was erected in 2015 and the OMA concluded on balance that the bringing into question of the route was the submission of the user forms by Wrightington Parish Council and the investigation subsequently carried out by the Planning and Environment Directorate in December 2014. Therefore, the OMA concluded that the relevant twenty year period under consideration would be December 1994 – December 2014.

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34. The OMA are now mindful of evidence that has come to light after the making of the Order in respect of notices erected by the OMA in 2011 and discussions with landowners about upgrading the route to a bridleway in 2011-2012. Although the Parish Council appear to have been aware of the reports that prompted the erection of the notices and discussions with the landowners the OMA are unaware that public use of the route on horseback was challenged at that time.
35. Evidence presented to the OMA prior to the making of the Order illustrated use of the Order route on horseback and on bicycles. A detailed analysis of the user evidence was provided in the Regulatory Committee report (Document 21). 25 user evidence forms ("UEF") were submitted to the OMA in 2014. 1 of the user forms was excluded as it was an incomplete form and is not included in the bundle submitted leaving a total of 24 forms submitted as part of the OMAs case. (Document 20).
36. The information submitted by users was provided on UEF forms made available by the OMA to anyone wishing to apply for a Definitive Map Modification Order at that time. Three sets of forms were produced with the intention of gathering separate evidence of use on foot, use on horseback and use by non-mechanically propelled vehicles. It was subsequently found that the forms led to some confusion, and they were later replaced by a single form used to document all types of public use. In relation to this case it is noted therefore that one user (Mrs Glenda Jackson) submitted two forms, one documenting use on horseback and one where she specifies use on foot. Another user (Mr A Jackson) completed the form for use by non-mechanically propelled vehicular also specifying use on foot.
37. Appreciating the fact that it is now 10 years since UEFs were submitted the OMA wrote to all users at the addresses provided at that time (except for seven users who would now be over 80 years of age). Eight users responded and have provided written Witness Evidence Forms in support of their UEFs (Document 23).
38. The OMA concluded, prior to making the Order that the relevant twenty year period under consideration would be December 1994 – December 2014. On further investigation it is suggested that this be more accurately regarded as January 1994 – January 2014 because although the Parish Council submitted the forms in December 2014 the UEFs were dated earlier. That said, there is evidence suggesting public use on horseback and bicycle had continued up to and beyond December 2014 until a barrier was temporarily erected in 2015.
39. Based on that time period January 1994 – January 2014 the user evidence considered showed use by the public of the route on horseback or bicycle by 18 individuals with 7 users documenting use for the full 20 year period, 4 users documenting 19 years use, 1 user for 18 years, 1 user for 16 years, 1 user for 14 years, 2 users for 12 years and 1 user for 9 years.
40. Use of the route appeared to be sufficiently frequent, and users did not report any instances of being stopped or turned back from using the route and use of the route appeared to have been without stealth, force or secrecy.

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41. Should the Inspector be minded to take the view that public rights were called into question at an earlier date by the erection by the OMA of 'No Horses' signs in 2011 and/or the discussions by representatives of the OMA with landowners about improvement works to surface and widen the route and possible agreements to dedicate bridleway rights then it will be necessary to consider earlier evidence of use which has been submitted by those persons submitting details of user evidence and witness statements.
42. Evidence of use between 1990 and 2010 is compelling with 19 users providing evidence of use on horseback or bicycle. 13 of those users claim to have used the route for the full 20 years, 2 users record 18 years use, 1 user recorded 16 years, 2 further users recorded 15 years use and 1 user provided details of 10 years use.
43. Following the making of the Order a representation was submitted by Mr and Mrs Green, Chisnall Hall Farm, Mossy Lea Road, Wrightington (Document 4). Mr and Mrs Green explained that they had owned the land crossed by the Order route between points D-F since 1986.
44. They confirmed that they had no objections to the upgrading of the footpath to a bridleway and that when they purchased the land in 1986, the footpath was being used by horse riders which they explained was the reason why they erected a fence alongside it. Mr and Mrs Green still own this section of land.

Summary

45. The Order route is currently recorded as a public footpath. The Order, if confirmed, will upgrade the section of footpath from points A-B-C-D-E-F-G to a bridleway.
46. It is the OMA's case that the standard of proof required is the balance of probability.
47. Whilst there is no evidence of an express dedication of the full length of the Order route, the OMA considers a dedication of bridleway rights can be inferred, on balance, from all the circumstances at common law or deemed under s.31 Highways Act 1980.

Conclusion

48. The OMA has concluded that taking all the relevant evidence into account, on balance dedication as a bridleway under Section 31 can be deemed and the footpath under consideration should be recorded as having bridleway status.
49. Furthermore, there is no evidence that a legal stopping up of any part of the route has ever taken place. The legal maxim "Once a highway always a highway" would apply as unless stopped up by proper legal process a highway remains where it was dedicated, even if no longer used.
50. Accordingly, the OMA states that a public bridleway subsists along the Order route. The OMA further states that the criteria for a modification of the DMS under section 53 of the 1981 Act are satisfied.

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51. The OMA wishes to draw the Inspector's attention to a clerical error in the Order. In the Order's Schedule Part 1 Description of Path or Way to be Upgraded, on lines 7 & 8 after where it says ... "at point F" add "and thence to a point G". Also, on the last line of that paragraph after "Points A-B-C-D-E-F" add "-G" to reflect the full length of the Order route. It is not considered that any prejudice would be suffered by anyone by this minor modification.
52. The OMA decided that the Order should be promoted to confirmation because the higher test for confirmation referred to in paragraph 23 is met. The objections received do not give any grounds for the OMA to reverse its decision on promoting the Order to confirmation. The OMA therefore respectfully requests that the Planning Inspector confirms the Order subject to the modifications to both the Order itself and the lettering on the Order plan as referred to above.